IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2396 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAUJAN EMPLOYEES UNION

Versus

ADMINISTRATOR/OWNER OF MR SHAH TRANSPORT

Appearance:

1. Special Civil Application No. 2396 of 2001

MR JITENDRA MALKAN for Petitioner No. 1

MR KB PANERI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 08/10/2004

ORAL JUDGEMENT

In the present petition, the petitioner Union has challenged the legality of the order dated 27/29.4.2000 passed by the Labour Court, Gandhidham/Bhuj, by which the

application of the petitioner being Recovery Application No.1/99 came to be rejected.

2. The petitioner herein had filed the abovenumbered Recovery Application No.1/99 before the Labour Court claiming amounts towards alleged unpaid wages, overtime, leave encashment, public holidays leave salary and unpaid bonus. The respondent herein had appeared before the Labour Court and contested the claim of the Union. Through the reply, the respondent had contended that there is no preexisting right since there is no adjudication with respect to the payability of the said amounts. In fact, the respondent had contested the very basis of the application and disputed the employer-employee relationship. Even otherwise, apart from this, the respondent had also contested the claims made by the petitioner Union before the Labour Court. In short, the amounts demanded by the petitioner did not flow from a preexisting right through a proper adjudication by a competent court nor were the amounts admitted by the respondent.

3. After hearing the parties, the Labour Court was pleased to come to the conclusion that in the facts of the case, the application for recovery under section 33-C(2) of the Industrial Disputes Act would not be maintainable. For coming to the said conclusion, the Labour Court took into account the disputed nature of the amounts claimed as also the ratio of several decisions pointed out to the Labour Court.

4. The petitioner has in the present petition, questioned the above mentioned order of the Labour Court. While going through the order of the Labour Court, I find that the demands made by the petitioner Union were highly disputed. The respondent had right from the inception, questioned even the employer-employee relationship between the parties. Even otherwise individually claims were disputed. In that view of the matter, it was not possible for the Labour Court to examine the claims on merits and decide the payability of the same in an application for recovery filed under section 33-C(2) of the Industrial Disputes Act. It is by now well settled that under section 33-C(2) of the said Act, the Labour Court cannot adjudicate the question of payability of the amount itself and can only grant recovery of the amount flowing from existing right.

5. In the case of Tara v. Director, Social Welfare, AIR 1999 SC 1508, the Hon'ble Supreme Court found that the status and nature of employment of the appellants as

Anganwadi Workers/Helpers was disputed and that therefore, unless there is prior adjudication on the merits of the status which is the foundation for making the claims for wages at the specified rates, the question of moving an application under section 33-C(2) for computation of the wages does not arise.

6. In the decision reported in AIR 2000 SC 3734 (State Bank of India v. Ram Chandra Dubey) the Hon'ble Supreme Court was pleased to make following observations.

"8. The principles enunciated in the decisions referred by either side can be summed up as follows:-

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33C(2) of the Act. The benefit sought to be enforced under Section 33C(2) of the Act is necessarily a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered, just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workmen as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the backwages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for backwages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is

> entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of backwages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages."

It can, therefore, be seen that when the claims of the employees made through the Union before the Labour Court were highly disputed, the Labour Court correctly found that the said issues cannot be decided in a recovery application filed under section 33-C(2) of the Industrial Disputes Act and I am perfectly in agreement with the view taken by the Labour Court and I do not find any illegality having been committed in passing the impugned order.

7. In the result, I find that there is no merit in the petition and the same is hereby rejected. Rule is discharged.

(Akil Kureshi, J.)
(vjn)